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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/717,088	11/22/2000	Thomas Sai Ying Ko	Q-61930	1770

7590

04/09/2003

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EXAMINER

YU, GINA C

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 04/09/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/717,088

Applicant(s)

KO, THOMAS SAI YING

Examiner

Gina C. Yu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Receipt is acknowledged of Amendment filed on December 24, 2002. Claim rejections under 35 U.S.C. § 103 are maintained for the reasons of record as indicated in the previous Office action dated August 27, 2002. Claims 22-38 are pending.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 22-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gleichenhagen et al. (US 3987000) in view of Tipton et al. (US 5632727) and/or Modak et al. (US 5708023).

The rejection is maintained for the reasons of record.

Response to Arguments

Applicant's arguments with respect to claims 22-38 have been considered but are not persuasive.

Applicants argue that the Gleichenhagen reference teach prior art film-forming polymers and the disadvantages thereof. Examiner respectfully disagrees. The reference teaches that sprayable film-forming solutions in volatile, non-toxic organic solvents for wound-bandage is well known. The reference specifically mentions acrylic and methacrylic acid esters, such as polymethyl methacrylate, polyethyl methacrylate, poly-2-ethoxy ethyl methacrylate. See col. 1, lines 33 – 65. However, the reference does not indicate, either expressly or implicitly, that all the known film-forming polymers have the disadvantages. The only film-forming polymers that are said to have

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undesirable properties are, specifically, polymers containing β -dimethylamino-ethylmethacrylate units, polyvinyl pyrrolidone, and poly-2-ethoxy ethyl methacrylate. See col. 3, lines 12-32. Thus, applicants' suggestion that the Gleichenhagen reference somehow teaches of disadvantages of using conventional film-forming polymers for wound-bandage sprayable solution is unpersuasive.

Applicants further argue that the reference suggests that the antiseptic or antibacterial components must be used in organic solvent to overcome the problems of the prior arts such as lack of solubility. Examiner takes the position that no such inference can be drawn from the reference. The lack of solubility mentioned in col. 3, lines 31 – 41 refers to using prior art film-forming polymers in solvent-propellant mixtures, which could also render a routineer a motivation to opt a pump-spray formulation instead. Furthermore, using an active ingredient that is soluble in organic solvents such as ethanol does not necessarily render using a water-soluble active nonobvious.

Applicants also argue that the Gleichenhagen invention lacks plasticizer. Examiner reiterates that the reference teaches that it is well known in the art to employ plasticizer in wound-dressing sprayable composition.

Applicants also argue that Tipton is distinct from the present invention in that the prior art is a two-part composition, and contains water, whereas the present invention is a one-step composition not containing water. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

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See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, an one-step wound-dressing sprayable composition in organic solvents is taught in Glechenhagen. The Tipton reference was cited to show that it is well known to add anti-fungal active agent in a wound-dressing sprayable composition. Furthermore, examiner takes the position that the Tipton invention is not limited to a two-part composition as applicants argue, and notes that the reference in fact teaches that the spray composition can be dispensed via a pump. See Tipton, col. 3, lines 41 – 56.

Similarly, applicants' argument that the Modek gel composition does not render instant invention obvious is not persuasive, since the combined references suggest a pump sprayable composition.

In response to applicants argument that the combined references do not teach the "progressive disintegration over 24 to 48 hour period", examiner notes that the ingredients of the claimed invention is all well known in the sprayable wound-dressing composition art. The recited limitation is viewed as the resulting property of the obvious variation of the cited prior arts.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a

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reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, the obviousness rejection is based on the factual evidences that would have been available to a skilled artisan at the time of the present invention. Thus the rejection is proper.

CONCLUSION

No claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

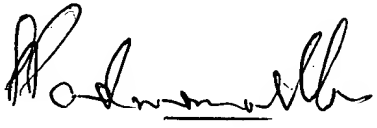
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 703-305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 703-

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308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu
Patent Examiner
April 4, 2003


SREENI PADMANABHAN
PRIMARY EXAMINER

4/7/03